U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

File: LIN 03 008 50087 Office: NEBRASKA SERVICE CENTER Date: FEB 13 2003

IN RE: Petitioner:
Beneficiary: [redacted]

Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(P)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(P)(i)

IN BEHALF OF PETITIONER:

[redacted]

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office ("AAO") on appeal. The appeal will be dismissed.

The petitioner is a gymnastics school. The petitioner filed a Form I-129 (Petition for a Nonimmigrant Worker) seeking classification of the beneficiary as an internationally recognized athlete pursuant to section 101(a)(15)(P)(i) of the Immigration and Nationality Act (the "Act"). The petitioner seeks to employ the beneficiary temporarily in the United States as a head men's gymnastic coach for a period of three years at an annual salary of $30,000. The petitioner indicated that it intended to employ the beneficiary as a coach and competitor in United States and overseas gymnastic tournaments.

In his decision, the director denied the petition, finding that the petitioner failed to establish that the beneficiary is an athlete performing at an internationally recognized level of performance who seeks to enter the United States solely for the purpose of performing as such an athlete with respect to a specific athletic competition. The director denied the petition, in part, finding that the petitioner failed to establish that the beneficiary could compete at an internationally recognized level of performance, given that the beneficiary has not competed at an international level since 1997.

On appeal, counsel for the petitioner submits a brief and additional documentation. In the brief, counsel for the petitioner asserts that the beneficiary is coming to the United States to compete and that his coaching duties are promotional activities incidental to "the activity of gymnastics." Counsel for the petitioner states that it provided the Service with a contract between the petitioner and the beneficiary that "clearly states that the beneficiary shall compete as a representative of petitioner at various national and international tournaments."

Under section 101(a)(15)(P)(i) of the Act, an alien having a foreign residence which he or she has no intention of abandoning may be authorized to come to the United States temporarily to perform services for an employer or sponsor. Section 214(c)(4)(A) of the Act, 8 U.S.C. § 1184(c)(4)(A), provides that section 101(a)(15)(P)(i) of the Act applies to an alien who:

> (i) performs as an athlete, individually or as part of a group or team, at an internationally recognized level of performance, and
>
> (ii) seeks to enter the United States temporarily and solely for the purpose of performing as such an athlete with respect to a specific athletic competition.

8 C.F.R. § 214.2(p)(1)(i) provides for P-1 classification of an alien:

> General. Under section 101(a)(15)(P) of the Act, an alien having a residence in a foreign country which he or she has no intention of abandoning may be authorized to come to the United States temporarily to perform services for an employer or a sponsor. Under this nonimmigrant category, the alien may be classified under section 101(a)(15)(P)(i) of the Act as an alien who is coming to the United States to perform services as an internationally recognized athlete, individually or as part of a group or team.

8 C.F.R. § 214.2(p)(1)(ii) provides for P-1 classification of an alien:

> (1) To perform at specific athletic competition as an athlete, individually or as part of a group or team, at an internationally recognized level or performance.

8 C.F.R. § 214.2(p)(2)(ii) requires, in part, that a petition for an internationally recognized athlete must include:

> (A) The evidence specified in the specific section of this part for the classification;
>
> (B) Copies of any written contracts between the petitioner and the alien beneficiary or, if there is no written contract, a summary of the terms of the oral agreement under which the alien(s) will be employed; and
>
> (C) An explanation of the nature of the events or activities, the beginning and ending dates for the events and activities, and a copy of any itinerary for the events and activities.

8 C.F.R. § 214.2(p)(3) states that:

> *Internationally recognized* means having a high level of achievement in a field evidenced by a degree of skill and recognition substantially above that ordinarily encountered, to the extent that such achievement is renowned, leading, or well-known in more than one country.

8 C.F.R. § 214.2(p)(4)(i)(A) provides, in pertinent part, that:

> *P-1 classification as an athlete in an individual capacity.* A P-1 classification may be granted to an

alien who is an internationally recognized athlete based on his or her own reputation and achievements as an individual. The alien must be coming to the United States to perform services which require an internationally recognized athlete.

8 C.F.R. § 214.2(p)(4)(ii) sets forth the documentary requirements for P-1 athletes as:

(A) *General.* A P-1 athlete must have an internationally recognized reputation as an international athlete or he or she must be a member of a foreign team that is internationally recognized. The athlete or team must be coming to the United States to participate in an athletic competition which has a distinguished reputation and which requires participation of an athlete or athletic team that has an international reputation.

(B) *Evidentiary requirements for an internationally recognized athlete or athletic team.* A petition for an athletic team must be accompanied by evidence that the team as a unit has achieved international recognition in the sport. Each member of the team is accorded P-1 classification based on the international reputation of the team. A petition for an athlete who will compete individually or as a member of a U.S. team must be accompanied by evidence that the athlete has achieved international recognition in the sport based on his or her reputation. A petition for a P-1 athlete or athletic team shall include:

(1) A tendered contract with a major United States sports league or team, or a tendered contract in an individual sport commensurate with international recognition in that sport, if such contracts are normally executed in the sport, and

(2) Documentation of at least two of the following:

(i) Evidence of having participated to a significant extent in a prior season with a major United States sports league;

(ii) Evidence of having participated in international competition with a national team;

(iii) Evidence of having participated to a significant extent in a prior season for a U.S. college or university in intercollegiate competition;

(iv) A written statement from an official of a major U.S. sports league or an official of the governing body of the sport which details how the alien or team is internationally recognized;

(v) A written statement from a member of the sports media or a recognized expert in the sport which details how the alien or team is internationally recognized;

(vi) Evidence that the individual or team is ranked if the sport has international rankings; or

(vii) Evidence that the alien or team has received a significant honor or award in the sport.

8 C.F.R. § 214.2(p)(7)(i) requires, in pertinent part:

(A) Consultation with an appropriate labor organization regarding the nature of the work to be done and the alien's qualifications is mandatory before a petition for P-1, P-2, or P-3 classification can be approved.

The beneficiary is a native and citizen of South Korea. In support of the petition, the petitioner submitted a letter stating that the beneficiary "is truly an outstanding gymnast. His credentials and accomplishments as a gymnast and coach are internationally renowned." The petitioner provided the Service with an advisory opinion by Ron Galimore, Senior Director, Men's Program of the United Stats Gymnastics Federation, that states: "[the beneficiary] is extremely well known as a former World and Olympic athlete from Korea. [The beneficiary] was a member of Korea's 1996 Olympic team as well as their 1995 and 1997 World Championships teams [sic]. Furthermore, [the beneficiary] was a member of Korea's national team from 1993-1997."

The director concluded that the evidence submitted was insufficient to establish that the beneficiary satisfied the standard of an internationally recognized athlete necessary for P-1 classification.

After careful review of the record, it is determined that the petitioner has overcome the director's objections on that ground for denial of the petition. 8 C.F.R. 214.2(p)(4)(ii)(B)(2) specifies the criteria that must be satisfied to establish that an alien is an internationally recognized athlete. The letter from the petitioner detailing the beneficiary's record is considered, but is insufficient to establish eligibility. Nevertheless, the petitioner provided the Service with evidence that the beneficiary satisfies two of the criteria set forth at 8 C.F.R. § 214.2(p)(4)(ii)(B)(2).

The director denied the petition, in part, finding that the petitioner failed to establish that the beneficiary could compete at an internationally recognized level of performance, given that the beneficiary has not competed at an international level since 1997. This portion of the director's decision is withdrawn.

The next issue in this proceeding is whether the petitioner established that the beneficiary is coming to the United States solely for the purpose of performing as an athlete at an internationally recognized level of play with respect to a specific athletic competition.

Competition is defined at 8 C.F.R. § 214.2(p)(3) as follows:

> *Competition, event, or performance* means an activity such as an athletic competition, athletic season, tournament, tour, exhibit, project, entertainment event, or engagement. Such activity could include short vacations, promotional appearances for the petitioning employer relating to the competition, event, or performance, and stopovers which are incidental and/or related to the activity. An athletic competition or entertainment event could include an entire season of performances. . . . .

The director denied the petition, in part, because the evidence on the record repeatedly indicated that the petitioner seeks the beneficiary's services as a coach rather than as an athlete coming solely to perform in an athletic competition or season.

In response to the director's request for additional documentation, the petitioner supplied the Service with a signed agreement dated August 5, 2002 that provides that the petitioner agrees to employ the beneficiary for the position of head gymnastics coach. The beneficiary's job duties include "building the boy's and men's programs as well as coach current boy's team members . . . and prepare . . . team members for competition." The petitioner included an addendum to the contract dated August 30, 2002 that states that the beneficiary will be able to compete in various gymnastics tournaments and that the petitioner would assist the beneficiary in obtaining a USA Gymnastics Certification, a prerequisite for participation in certain competitions. In a cover letter attached to the response to the request for additional documentation, counsel for the petitioner asserts that the beneficiary will coach "the many days in between competitive events."

On review, the record establishes that the petitioner seeks to employ the beneficiary principally as a coach, and that competitions would be ancillary to his primary job duties.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not met that burden.

ORDER: The appeal is dismissed.